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November 6, 2006

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Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 06-172: In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas

Dear Ms. Dortch:

Broadview Networks, Inc., Covad Communications Group and XO Communications, Inc., through counsel, hereby submit for filing in the above-referenced proceeding their Reply Comments supporting the Motion to Dismiss and Motion to Compel Disclosure of Confidential Documents Pursuant to Protective Order, and four (4) copies of the same. Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions regarding this filing.

Respectfully submitted,

Brett Heather Freedson
Brett Heather Freedson

cc: Jeremy Miller, Wireline Competition Bureau
Tim Stelzig, Wireline Competition Bureau
Marcus Maher, Wireline Competition Bureau

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CERTIFICATE OF SERVICE

I, Brett Heather Freedson, hereby certify that true and correct copies of the foregoing Reply Comments in WC Docket No. 06-172 were delivered via email and first class mail, postage pre-paid, this 6th day of November 2006, to the individuals on the following list:

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

)
Petitions of the Verizon Telephone Companies)
for Forbearance Pursuant to 47 U.S.C. § 160(c))
in the Boston, New York, Philadelphia,)
Pittsburg, Providence and Virginia Beach)
Metropolitan Statistical Areas)

WC Docket No. 06-172

REPLY COMMENTS

Broadview Networks, Inc., Covad Communications Group, and XO Communications, Inc., through counsel and pursuant to the October 18, 2006 Public Notice of the Federal Communications Commission (the "Commission"),¹ submit these Reply Comments in support of: (1) the Motion to Dismiss;² and (2) the Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order,³ filed in the above-captioned proceeding to evaluate the Petitions of the Verizon Telephone Companies ("Verizon") requesting that the Commission forbear from

¹ *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburg, Providence and Virginia Beach Metropolitan Statistical Areas*, Public Notice, WC Docket No. 06-172, DA 06-2056 (rel. Oct. 18, 2006).

² Motion to Dismiss of ACN Communications Services, Inc.; Alpheus Communications, L.P.; ATX Communications, Inc.; Cavalier Telephone Corporation; CityNet Pennsylvania, LLC; CTSI, LLC; DSLNet Communications, LLC; Eureka Telecom, Inc. d/b/a InfoHighway Communications; Integra Telecom, Inc.; McLeodUSA Telecommunications Services, Inc.; Mpower Communications Corp.; NuVox Communications; RCN Telecom Services, Inc.; Talk America Holdings, Inc.; TDS Metrocom, LLC; U.S. Telepacific Corp. d/b/a Telepacific Communications; XO Communications, Inc. (filed Oct. 16, 2006). These parties are collectively referred to as the "CLEC Movants."

³ Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order of Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, Inc. (filed Oct. 11, 2006).

applying certain of its rules to telecommunications services provided by Verizon within six (6) Metropolitan Statistical Areas ("MSAs").⁴

For the reasons set forth in the Motion to Dismiss, and supporting comments,⁵ the Commission should summarily deny the sweeping forbearance relief sought by Verizon on the basis of the fact that carriers' confidential information was unlawfully disclosed to the Commission in the Verizon Petitions. As the CLEC Movants and the overwhelming majority of commenters underscore, the Commission should not permit Verizon to base its forbearance requests on data submitted in flagrant violation of 47 U.S.C. § 222, the Commission's Protective Order in the Verizon/MCI Merger Proceeding, and the interconnection agreements between Verizon and competitive carriers.⁶ Under the circumstances presented here, any grant of forbearance by the Commission would be tantamount to a reward of Verizon's gross misconduct,

⁴ Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area (filed Sept. 6, 2006); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area (filed Sept. 6, 2006); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area (filed Sept. 6, 2006); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area (filed Sept. 6, 2006); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area (filed Sept. 6, 2006); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area (filed Sept. 6, 2006), WC Docket No. 06-172 (consolidated) (the "Verizon Petitions").

⁵ See Comments in Support of Motion to Compel of Alpheus Communications, L.P.; Cavalier Telephone Corporation; CityNet Pennsylvania, LLC; CTSI, LLC; DSLNet Communications, LLC; Eureka Telecom, Inc. d/b/a InfoHighway Communications; McLeodUSA Telecommunications Services, Inc.; Mpower Communications Corp.; RCN Telecom Services, Inc.; Talk America Holdings, Inc; TDS Metrocom, LLC; U.S. Telepacific Corp. d/b/a Telepacific Communications (filed Oct. 30, 2006); Comments of the AdHoc Telecommunications Users Committee (filed Oct. 30, 2006); CompTel's Comments in Support of Motion to Dismiss (filed Oct. 30, 2006); Comments of Cox Communications, Inc. on Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order and on Motion to Dismiss (filed Oct. 30, 2006); Sprint Nextel Corporation's Comments in Support of Motion to Dismiss, and Alternatively, of Motion to Compel (filed Oct. 30, 2006).

⁶ See Comments of CompTel at 2-5; Comments of Sprint Nextel Corporation at 2-5.

and would severely undermine present and future efforts by the Commission to protect confidential carrier information.

At a minimum, and only to the extent that the Verizon Petitions are not dismissed, the Commission should direct Verizon to make available to authorized parties, subject to the terms and conditions of the Protective Order, all confidential information submitted to the Commission by Verizon, in its Petitions or otherwise. In support of the CLEC Parties' Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order, the commenting parties generally concur that Verizon may not, consistent with the Protective Order, selectively withhold from disclosure any carrier-specific data set forth in the Verizon Petitions, or otherwise used by Verizon to demonstrate compliance with the statutory forbearance requirements.⁷ Furthermore, the majority of commenters correctly assert that Verizon's blatant and persistent noncompliance with the terms and conditions of the Protective Order effectively denies interested parties any opportunity to test the merits of the Verizon Petitions, and thereby taints this proceeding.⁸ Verizon cannot have it both ways. If Verizon chooses to rely on confidential information to support its forbearance requests, Verizon must ensure that such information remains equally available to the Commission and interested parties, subject to the terms of the Protective Order.

Importantly, the Protective Order does not permit Verizon unilaterally to determine whether certain confidential information that it submits to the Commission is "reasonably necessary" for interested parties to evaluate the Verizon Petitions, subject to the requirements of

⁷ Comments of AdHoc Telecommunications Users Committee 3; Comments of the CLEC Movants at 2; Comments of Cox at 6; Comments of Sprint Nextel Corporation at 7.

⁸ Comments of the CLEC Movants at 2; Comments of CompTel at 9-10; Comments of Cox at 6-9; Comments of Sprint Nextel Corporation at 7-8.

47 U.S.C. § 160.⁹ To the contrary, *all* of the data on which Verizon relies to support its forbearance requests is, by definition, germane to the Verizon Petitions, and must be subject to review and comment by interested parties. To the extent that Verizon is unwilling to disclose to authorized parties any confidential information that Verizon believes is not “reasonably necessary” to evaluate its Petitions, Verizon must be required to strike such information from the record in this proceeding. Further, acceptance of Verizon’s justification for withholding confidential data from interested parties would place Verizon in the role of gatekeeper of the confidential information in this proceeding, free to apply its narrow and subjective reading of the terms and conditions of the Protective Order to further its aims. The Commission must not allow this to happen.¹⁰

As a final matter, Verizon disingenuously claims that it will supply to requesting parties the carrier-specific confidential information of any carrier, provided that such parties separately obtain prior authorization to review such information from the affected carrier.¹¹ The process suggested by Verizon would place the burden of obtaining confidential information on requesting parties, rather than on the parties that voluntarily submitted such confidential

⁹ Response to Motion to Compel Disclosure to Other Carriers’ Confidential Information of the Verizon Telephone Companies at 3 (filed Oct. 30, 2006) (“Verizon Response”).

¹⁰ Although Verizon claims that it similarly withheld from disclosure the confidential information of third-party carriers in prior Commission proceedings, the Verizon Response fails to cite a single instance in which the Commission sanctioned Verizon’s practice.

¹¹ To our knowledge, Verizon has not provided any list including all of the carriers for which the Verizon Petitions contain carrier-specific confidential information. *See* Verizon Response at 2.

information to the Commission in the first instance, in contravention of the terms and conditions of the Protective Order.¹²

CONCLUSION

For the reasons set forth herein, in the Motion to Dismiss and the Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order, and in the comments submitted by interested parties, the Commission should dismiss the Verizon Petitions, or in the alternative, should direct Verizon to make available to authorized parties, subject to the terms and conditions of the Protective Order, all confidential information submitted to the Commission by Verizon, in its Petitions or otherwise.

Respectfully submitted,



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Dated: November 6, 2006

¹² Moreover, the burdens associated with obtaining the authorizations of individual carriers to view carrier-specific confidential information would unduly delay the efforts of interested parties to prepare comments on the Verizon Petitions.